

Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 15 of 2014

National Asset Management Company Limited

.... Appellant

Versus

Mr. Shahid Naseem, Executive Director

Specialized Companies Division

SECP, Karachi

.... Respondent

Date of hearing

6/05/2015

Present:

For the Appellant:

Barrister M. Saad Buttar, for the Appellant

For the Respondent (through video conference):

- i. Shahid Naseem, Executive Director (SCD)
- ii. Ahmer Majeed Fareedi, Joint Director (SCD)
- iii. Qaiser Iqbal, Deputy Director (SCD)

ORDER

1. This Order shall dispose of Appeal No. 15 of 2014 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 30/05/14 (Impugned Order) passed by the Respondent.

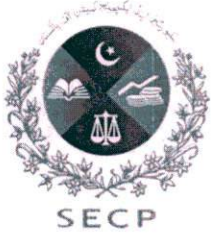


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2. The brief facts of the instant appeal are that M/s National Asset Management Company Limited (NAMCO) is a Non-Banking Finance Company incorporated in Pakistan as public unlisted company in the year 2005 under the Companies Ordinance, 1984 (Ordinance). NAMCO was licensed by the Commission to undertake the businesses of asset management and investment advisory services under the Non-Banking Finance Companies (Establishment & Regulation) Rules 2003 (NBFC Rules 2003) and Notified Entities Regulations, 2008 (NBFCs & NE Regulations, 2008). The shareholding details of NAMCO as of 30/06/13 is as follows:

Shareholder's Name	Shareholding (%)
Associated	
First National Equities Limited	37.38%
Switch Securities (Pvt.) Ltd	4.67%
First Pakistan Securities Ltd	4.67%
Ali Aslam Malik	6.55%
	53.27%
Others:	
Azneen Bilwani	28.04%
Roomana Nasir	7.48%
Basheer Ahmed & Nishat Basheer	7.01%
Syed Etrat Hussain Rizvi/Samina Rizvi	4.18%
Others	46.73%
Total	100.00%

3. Total equity of NAMCO amounted to Rs.130.38 million as of 31/03/14 in accordance with the monthly returns as provided by NAMCO. Further, NAMCO has zero (0)



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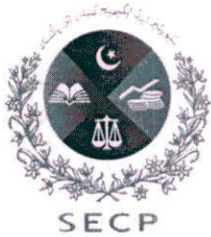
portfolio of investment advisory. As of 31/03/14, NAMCO is managing one closed-end collective investment scheme i.e. NAMCO Balanced Fund (NBF) and one open end collective investment scheme (NIF) with net assets amounting to Rs.1,081.87 million and Rs.115.28 million respectively.

4. Fund performance of NBF and NIF during past five years as reported by NAMCO is as under:

Year (July-June)	NAMCO Balanced Fund				NAMCO Income Fund			
	Benchmark Return &	Fund Return &	Out/(under) Performance %	Net Assets (Rs. in M)	Benchmark Return%	Fund Return %	Out/(under) Performance %	Net Assets (Rs. in M)
FY2013-14	22.70	15.51%	(7.19)	1,081.87	4.22	4.22	(5.42)	115.28
FY2012-13	39.50	19.81%	(19.69)	941.51	6.74	6.74	(3.23)	106.98
FY2011-12	11.03	3.08	(7.95)	790.82	12.45	15.14	2.69	107.39
FY2010-11	23.99	12.97	(11.02)	766.21	13.08	8.30	(4.78)	91.95
FY2009-10	26.68	18.60	(10.08)	678.16	12.44	7.48	(4.96)	278.50
FY2008-09	(28.76)	(29.15)	(0.39)	721.81	13.99	14.76	1.37	286.40

5. NBF underperformed its benchmark for the last six years consecutively, while NIF underperformed for four years out of six years as given above. NAMCO has been operating below the minimum equity requirement ("MER") since July, 2011 in contravention of Rule 7(3) of NBFC Rules, 2003 and Regulation 4 of the NBFCs and NEs Regulations.

6. Show Cause Notice (SCN) dated 01/11/13 was served under section 282J(1) and section 282J(2) read with section 282D and section 282M(1) of the Ordinance for



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contravention of Rule 7(3) of NBFC Rules 2003 read with regulation 4 of the NBFCs and NEs Regulations, 2008. Hearings in the matter were held on 18/12/13 and 21/03/14.

7. The Respondent dissatisfied with the response of the Appellant held that NAMCO remained persistently non-compliant, in spite of numerous commitments and assurances towards ensuring compliance. NAMCO had made a number of commitments to raise its equity and to raise the NIF size and were given a number of opportunities to make up the shortfall but each time NAMCO failed to adhere to its firm commitment. In exercise of the powers of the Commission conferred under section 282J(2) of the Ordinance, NAMCO's license to undertake Asset Management Services issued under Rule 5 of NBFC Rules, 2003 was suspended with immediate effect. However, NAMCO's other license to undertake Investment Advisory Services was left intact. Further, since the directors of NAMCO did not comply with the NBFCs aforesaid Rule and the regulations and continued to operate without compliance to the minimum required equity and minimum required fund of NIF, a penalty of Rs.50,000 was imposed on each of its current directors namely Lt. Gen. (Retd.) M. Hamid Khan, Mr. Saleem Shahzada, M. Imtiaz Bashir and Mr. M. Asim Mustafa as well as ex-directors namely Mr. Shafiq A. Khan and Hafiz Avais Ghani. Furthermore, the trustee of both NBF and NIF i.e. MCB FSL were directed to take both the collective investment schemes i.e. NBF and NIF under its effective control on immediate basis and arrange to transfer their management rights to another Asset Management Company which best serves the interest of the unit/certificate holders.
8. The Appellant aggrieved of the Impugned Order has preferred the instant Appeal on the following grounds:



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- a. The Impugned Order passed by the Respondent is the result of misreading and on-reading of the available record. The view point of the Appellant Company has not been properly appreciated by the Respondent. The Appellant has not been provided proper opportunity of hearing as required under the law and the principle of audi alteram-partem, natural justice and equity have totally been violated in the instant case. The due process of law as enshrined under Article 10-A and Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 has not been adhered to in the instant case.
- b. There are many other companies and banks which do not fulfil the requirement prescribed for MER but no such notice has been issued to them and no order has been passed against them.
- c. The Respondent has directed the trustee to take both the collective investment schemes in its effective control on immediate basis and arrange to transfer their management rights to another 'asset management company'.
- d. It is worth mentioning that the Impugned Order was served upon the Appellant on June 2, 2014 through TCS whereas the Impugned Order was displayed on the SECP's website in the evening of May 30, 2014, which indicates that the Respondent desires to damage the business of the Appellant.
- e. The malicious attitude of the Respondent can be weighed from on simple action that he passed the Impugned Order on Friday, May 30, 2014 but did not let anybody know about it. All of sudden at 9:30 p.m. in the evening the Impugned Order appeared on to the Website of the SECP. The malice for this action can easily be interpreted with the selection of the week and day and time so that the Appellant Company cannot invoke the legal remedies available to them. That after appearance of the Impugned Order on the Website of SECP, the Respondent called the trustee of the funds (MCB-FSL), who informed Mr. Faisal Merchant, Chief Operating Officer of the Appellant Company at late night that such an order has been passed against the Company. The official trustee did inform the Chief

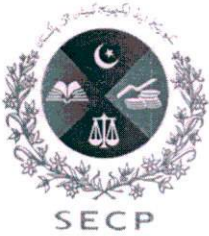


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Operating Officer to open his office on Saturday despite of official holiday for taking over the control/management of funds by him. Such very conduct of the Respondent proves only one thing i.e. personal vendetta and malicious attitude with all the possible malafide in the legal dictionary.

- f. Capital of the Company always increases with the passage of time according to the condition of the market. The Appellant requested for grant of reasonable opportunity to increase its equity according to the satisfaction of the SECP but this time was not granted to the Appellant which act on the part of the Respondent is arbitrary, whimsical, capricious, and fanciful. The equity of the Company as per audited accounts as on March 31, 2014 is Rs.130,205,906 whereas upon the conversion of the close end fund into open end for which the application is already pending with the SECP the equity will automatically be increased to Rs.199,000,000. The required equity is Rs.200,000,000 for the asset management.
- g. The minimum requirement for investment advisory services is Rs.30,000,000 and the Company has no active business in the investment advisory at the moment. The investment advisory license is kept intact by the Respondent while the 'asset management license' of the Company has been suspended which is the main line of business. That the Appellant filed a Writ Petition before the Honourable Lahore High Court, Lahore challenging the vires of the impugned order dated May 30, 2014 passed by the respondent, which was fixed before his lordship Mr. Justice Ijaz-ul-Ahsan, Honourable Judge, Lahore High Court, Lahore on June 4, 2014 and his lordship was pleased to direct the NAMCO to file a regular appeal before the Appellate Bench of the SECP and has protected the rights of the Appellant directing the SECP to hear the appeal and decide the matter of "grant of stay order" to the Appellant expeditiously.

9. The Respondent rebutted the grounds of the instant Appeal as follows:



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- a. The Appellant's contention that its view point was not appreciated and that proper opportunity of hearing was not provided are baseless. The Appellant was provided three hearing opportunities i.e. on December 18, 2013, March 21, 2014 and April 7, 2014 and all hearing opportunities were duly availed by the Appellant through its CEO designated director and the authorized representative. Hence, the Appellant's claim that the due process of law was not followed is not based on facts.
- b. Most of the asset management companies of this sector are compliant with the MER for undertaking asset management and investment advisory services and the necessary enforcement actions have been initiated against the non-compliant entity of asset management sector. Hence the Appellant's contention that they were discriminated and victimized by the Respondent is not factually correct. The Appellant must appreciate that they were granted ample opportunities, which spanned over a period of nearly three years to ensure compliance with the MER, which continuously was disregarded and the Appellant chose to stay non-compliant.
- c. During the course of first hearing held on December 18, 2013 the Appellant's authorized representative apprised the Respondent that the Appellant's major sponsor i.e. FNEL was in the process of issuing its Right Shares, which was to be completed by January 31, 2014 and following this process, the Appellant's issuance of Right Share would commence, which was to be completed by February 28, 2014. He assured that the Appellant would meet the said equity requirement through issuance of Right Share within the said timeline. It is also worth mentioning here that the Appellant's representative also assured on behalf of the respondents that MER would be met by the aforesaid timeline and requested the Respondent to hold the issuance of order until February 28, 2014. He further gave his commitment that the requested timeline was definitive, failing which the Commission may proceed as per law. Nevertheless, the Appellant



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failed to ensure its compliance within the above stated timeline. It may also be appreciated that no adverse order was issued instantly against the Appellant; instead further opportunities of being heard were granted to the Appellant and was advised to achieve the requisite compliance without any further delay. Keeping in view the above, Appellant's contentions do not hold any ground.

- d. The Appellant had knowingly and willfully remained non-compliant to Rule 7(3) of the NBFC Rules 2003 and Regulation 4 of the NBFCs & NEs Regulations, 2008 for a time span of more than two and a half years. The Appellant also remained non-compliant to Regulation 54(3)(a) of the NBFCs & NE Regulations 2008 and failed to increase the fund size of Namco Income Fund (NIF) up to the regulatory requirement for over one and a half year. The Appellant had failed to comply with the condition of its license of asset management services by consistently remaining non-compliant of the above requirements, its license to undertake asset management services was suspended by the Respondent in exercise of the powers of the Commission under section 282J(2) of the Ordinance conferred upon him. Since, any asset management company cannot manage the collective investment schemes without holding a valid license, therefore, in terms of Regulation 45(1) read with Regulation 41(n) of the NBFCs & NEs Regulations, 2008, the trustee of both Namco Balanced Fund (NBF) and NIF i.e. MCB Financial Services Limited were directed to take both the collective investment schemes under its effective control on immediate basis and arrange to transfer their management rights to another asset management company, which best serves the interest of the unit/certificate holders.
- e. The Impugned Order was issued on May 30, 2014 and the same was placed on the Commission's website and dispatched to the Appellant through courier service on the same day. It is reiterated that the Order was sent to the Appellant without any lapse of time; however, the Appellant must be aware that the courier service



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requires a few days' time to deliver the mail to the recipients, which was beyond control of the Respondent.

- f. The Appellant must appreciate that it was even earlier cautioned by the Commission in April 2011 regarding its potential equity shortfall and was advised to make up the arrangements to meet the MER. However, the Appellant's equity was short by Rs.27.83 million from MER as on June 30, 2011, while this equity shortfall further escalated to Rs.75.19 million on June 30, 2012 and Rs.86.91 on June 30, 2013 and Rs.99.62 million on March 31, 2014. During this period the Appellant was repeatedly advised through numerous letters to make up for the equity shortfall in terms of the NBFCs regulatory framework. Multiple extensions were also granted at several occasions by the Commission to ensure its compliance with the MER.
- g. The Appellant's license to carry out Investment Advisory Services is still intact instead its license for undertaking asset management services only has been suspended.
10. We have heard the parties and taken into consideration written submission by the Appellant and the Respondent. We have also perused the relevant provisions of the Ordinance which are as follows:

Rule 7(3) of the NBFC Rules 2003:

"An NBFC shall comply with such minimum equity requirement in respect of each form of business specified by the Commission from time to time by notification in the official Gazette".

Regulation 4 of the NBFCs & NEs Regulations, 2008:

"Minimum equity requirement- An NBFC licensed by the Commission to undertake any form of business as specified under section 282A shall, at all the



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times, meet the minimum equity requirement in respect of that form of business as provided in Schedule 1”

Regulation 54(3a) of the NBFCs & NE Regulations, 2008, which provides as follows:

“The minimum size of an Open End Scheme shall be one hundred million rupees at all times during the life of the scheme and all existing Open End Schemes shall ensure compliance with this minimum scheme size limit by the first day of July, 2012.”

11. The Appellants at the hearing contended that the capital adequacy requirements have been met by the Company, the fund size of the Company stands at PKR 2.8 million; and the Company has communicated that the size of the fund would further be raised to PKR 100 million.
12. The Bench has noted that the contentions put forth by the Appellant concerning the opportunity of hearing, malafide of the Respondent and the jurisdiction of the Respondent are not valid. Upon perusal of the matter it may be safely concluded that the Appellant was given ample opportunities concerning the satisfaction of MER. Moreover, repeated opportunities of hearing were given and the Appellant participated in the same.
13. It is important to clarify the issue of jurisdiction of the Respondent. This bench would like to state that the Respondent has been delegated authority under the relevant provisions of the Ordinance by the Commission.
14. However, the Bench after considering the contentions put forth by the Appellants at the hearing as noted in Paragraph 11 and the consent of the same given by the Respondent, in exercise of its powers under Section 33 of the SECP Act, 1997 hereby



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set aside the impugned order and remand the matter to the Respondent with the observation to assess the financial conditions of the Appellant especially with respect to the capital adequacy requirements and decide the case afresh. The instant appeal is accordingly disposed of.

15. Parties to bear their cost.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Tahir Mahmood)
Commissioner (CLD)

Announced on: **27 AUG 2015**